IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	)	Chapter 7
	)	
RAJESH C. PATEL,	)	Case No. 16-65074-lrc
	)	
Debtor.	)	
BERKELEY INVESTMENTS, LLC and SR 20 LODGING, INC.,	)	
	)	
Plaintiffs,	)	Adversary Proceeding
	)	
vs.	)	No. ________________
	)	
RAJESH C. PATEL,	)	
	)	
Defendant.	)	

COMPLAINT OBJECTING TO DISCHARGEABILITY OF DEBT

Plaintiffs Berkeley Investments, LLC ("Berkeley") and SR 20 Lodging, Inc. ("SR 20") (collectively, "Plaintiffs") hereby file their Complaint objecting to the dischargeability of Plaintiffs' claims against Defendant Rajesh C. Patel ("R.C. Patel"), the debtor in the above-captioned bankruptcy case, showing this Court as follows:

I. PARTIES, JURISDICTION AND VENUE

1.

Berkeley is a Georgia limited liability company.

2.

SR 20 is a Georgia corporation.

3.

R.C. Patel is an individual and a resident of Duluth, Georgia. R.C. Patel may be served with process at his home address of 2253 Gradyridge Trail, Duluth, GA 30097, or wherever he may be found.

4.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(J) and the Court has jurisdiction of this matter under 28 U.S.C. § 1334.

5.

Plaintiffs consent to the entry of any final orders or judgments by this Court if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6.

Venue is proper pursuant to 28 U.S.C. § 1409(a).

II. PROCEDURAL AND FACTUAL BACKGROUND

7.

The claims in this Complaint arise from R.C. Patel's conduct which is the subject of previous litigation and a judgment entered in favor of

Plaintiffs and against R.C. Patel in the Superior Court of Gwinnett County, Georgia (the "Superior Court") under Civil Action No. 08-A-07128-1 (the "First Superior Court Action") and Civil Action No. 11-A-01626-1 (the "Second Superior Court Action").

8.

R.C. Patel and his brother, Mukesh "Mike" C. Patel ("Mike Patel"), are well known in the South Asian community, and especially in the Indian community, being active in the American Asian Hotel Owners Association and having founded Haven Trust Bank formerly known as Horizon Bank.

9.

Diplomat PB Hotels, LLC ("Diplomat PB") was created on or about April 27, 2000. R.C. Patel represented to Plaintiffs that Diplomat PB's sole members were R.C. Patel and Mike Patel, each holding an equal fifty-percent (50%) membership interest in Diplomat PB.

10.

Subsequent to the initial creation of Diplomat PB, three entities became new members, each with a twenty-five percent (25%) membership interest in Diplomat PB: (1) Small Street Development Company, LLC ("Small Street"); (2) SR 20; and (3) Berkley.

11.

The remaining twenty-five percent (25%) membership interest in Diplomat PB was held by R.C. Patel and Mike Patel equally.

12.

Small Street invested $500,000.00 in exchange for a twenty-five percent (25%) membership interest in Diplomat PB.

13.

SR 20 invested $500,000.00 in exchange for a twenty-five percent (25%) membership interest in Diplomat PB.

14.

Berkley invested $500,000.00 in exchange for a twenty-five percent (25%) membership interest in Diplomat PB.

15.

Diplomat PB's primary business included hotel acquisition, building, construction, ownership, lease, purchase, development, sale, management, operations, franchising, mortgages, and insurance, and merchant building services to its clients.

16.

Pursuant to the Articles of Organization, R.C. Patel served as the manager of Diplomat PB.

17.

No operating agreement for Diplomat PB was ever entered into by Plaintiffs, R.C. Patel and Mike Patel.

18.

R.C. Patel's and Mike Patel's tenures as managing members were marked by numerous significant deficiencies and questionable transactions which harmed Diplomat PB's business and its members, non-exclusive examples of which are outlined in this Complaint.

19.

On or about September 12, 2000, Diplomat PB purchased a hotel property from RHM Wynfield, LLC that became a Country Inn & Suites (the "Country Inn & Suites Property").

20.

To fund the purchase of the Country Inn & Suites Property and subsequent renovations, Diplomat PB borrowed $4,000,000 from Nexity Bank.

21.

To secure the $4,000,000 construction loan, on or about September 12, 2000, Diplomat PB executed a deed to secure debt, security agreement and assignment of rents, as well as a guaranty in the amount of $4,000,000, and two secured notes payable to Nexity Bank. The first Note was for $500,000. The second Note was for $3,500,000.

22.

R.C. Patel and Mike Patel failed on numerous occasions to properly pay subcontractors for work completed on the Country Inn & Suites Property renovation project, resulting in liens being placed on the title to the Country Inn & Suites Property owned by Diplomat PB.

23.

R.C. Patel and Mike Patel failed to timely repay loans and as a result, often had to modify loan agreements, extend maturity dates and borrow additional funds.

24.

R.C. Patel and Mike Patel regularly borrowed additional and substantial sums of money on behalf of Diplomat PB, but failed to properly account for same.

25.

R.C. Patel and Mike Patel regularly directed Diplomat PB to pay substantial funds to various entities, including Diplomat Hotels Corp., an entity owned by R.C. Patel and Mike Patel, in payment of false "management fees" exceeding well over $1,500,000, without providing any accounting of how the fees were calculated.

26.

R.C. Patel and Mike Patel regularly failed to maintain complete and accurate accounting records for Diplomat PB.

27.

R.C. Patel and Mike Patel often borrowed money on behalf of Diplomat PB, obligating Diplomat PB to repay the amounts borrowed, without consulting or advising the other Diplomat PB members or obtaining authorization for the loans.

28.

On or about December 21, 2005, R.C. Patel and Mike Patel, on behalf of Diplomat PB but without consulting or advising other Diplomat PB members, refinanced the Country Inn & Suites Property with GE Capital Corporation in the amount of $3,500,000.

29.

The settlement statement dated December 21, 2005 from the GE Capital Corporation refinancing indicates that $299,115 of cash was advanced as loan proceeds, yet those funds were never accounted for in Diplomat PB's accounting records and no lawful explanation has ever been provided regarding the disposition of same. Rather, those funds were misappropriated by R.C. Patel and Mike Patel.

30.

In November of 2006, R.C. Patel and Mike Patel, on behalf of Diplomat PB but without consulting or advising other Diplomat PB members, entered into a refinancing transaction and borrowed $8,175,000 from Morgan Stanley Mortgage Capital Inc.

31.

R.C. Patel and Mike Patel failed to account for $4,023,397.51 loan proceeds from the November 2006 Morgan Stanley Mortgage Capital transaction.

32.

On or about April 17, 2007, R.C. Patel and Mike Patel, on behalf of Diplomat PB, consummated the sale of the Country Inn & Suites property.

33.

Subsequently, R.C. Patel and Mike Patel, in direct opposition to the desires of the other Diplomat PB members to disburse the sale profits to the members of the Diplomat PB and then dissolve Diplomat PB, caused the proceeds from the May 17, 2007 sale to be paid to a "Qualified Intermediary".

34.

R.C. Patel and Mike Patel failed to account for and misappropriated $1,939,086.06 of net proceeds paid to the Qualified Intermediary.

35.

Diplomat PB's 2005 accounting records show that over $400,000 was paid to R.C. Patel as an interest expense on an outstanding debt of $1,415,295.14 without justification and to the detriment of Plaintiffs.

36.

Furthermore, Diplomat PB's 2005 accounting records show that over $252,000 was paid to Mike Patel as an interest expense on an outstanding debt of $1,361,892.27 without justification and to the detriment of Plaintiffs.

37.

Diplomat PB's 2006 accounting records show that over $149,800 was paid to R.C. Patel and Mike Patel as an interest expense on outstanding debts of $376,897.87 and $226,724.75 respectively without justification and to the detriment of Plaintiffs.

38.

R.C. Patel and Mike Patel used, misappropriated and mismanaged Diplomat PB assets without consulting or advising the other Diplomat PB members, and without providing the other Diplomat PB members with an inventory or accounting of expenses.

39.

As demonstrated by Diplomat PB's financial statements, between December 31, 2001 and December 31, 2002, R.C. Patel and Mike Patel misappropriated funds of at least $500,000 from Diplomat PB; R.C. Patel and Mike Patel caused Diplomat PB to make unauthorized loans to them during 2007 and 2008, of nearly $1 million, without proper disclosure or approval; R.C. Patel and Mike Patel caused Diplomat PB to transfer nearly $90,000 in 2008 to their affiliate company; and R.C. Patel and Mike Patel failed and refused to provide Plaintiffs with necessary, requested accounting information and explanations for numerous accounting discrepancies.

40.

R.C. Patel and Mike Patel set up Diplomat PB and brought in Plaintiffs as investors with an intent to defraud Plaintiffs.

41.

R.C. Patel and Mike Patel used their status in the Indian community to induce Plaintiffs to participate in Diplomat PB.

42.

R.C. Patel and Mike Patel misrepresented numerous material facts to Plaintiffs and performed fraudulent and deceitful acts throughout the time of Plaintiffs' participation in Diplomat PB, including but not limited to misrepresenting:

a. The sources and uses of funds invested and spent in Diplomat PB;

b. The plan for the refurbishing of the Country Inn & Suites Property, and the plan to resell the Country Inn & Suites Property;

c. The actual purchase price of the Country Inn & Suites Property; and

d. The disposition and use of funds from the parties as well as the disposition and use of funds from the various refinancing and sale of the Country Inn & Suites Property.

43.

R.C. Patel and Mike Patel further defrauded the Plaintiffs by:

a. Refinancing the Country Inn & Suites Property several times to the detriment of Plaintiffs and Diplomat PB, and illegally retaining the economic benefit;

b. Using management companies to run the Country Inn & Suites Property and taking exorbitant and unearned fees, thus siphoning profits from Diplomat PB and Plaintiffs;

c. Hiding the true state of affairs of Diplomat PB and in doing so preventing Plaintiffs and Diplomat PB from taking earlier action; and

d. Without agreement from the other members of Diplomat PB, availing themselves of capital losses for income taxes to the detriment of the other members.

44.

Defendants R.C. Patel and Mike Patel each also took steps to actively conceal material information from Plaintiffs, particularly as it related to Diplomat PB's true financial condition, the relationships between Diplomat PB and R.C. Patel, Mike Patel and their affiliates, and R.C. Patel's and Mike Patel's misappropriation of Diplomat PB funds an assets.

45.

Plaintiffs justifiably relied on R.C. Patel's and Mike Patel's representations and, as a result of their justifiable reliance, suffered damages, as subsequently established by the Superior Court in the First Superior Court Action and the Second Superior Court Action.

46.

R.C. Patel and Mike Patel committed numerous acts of conversion and defalcation under the laws of Georgia in that they either acquiesced to, caused or participated in:

(a) The improper and unlawful use of Diplomat PC's funds, to which Plaintiffs had a legal right, claim or interest and to which Defendants had no legal right, claim or interest; and

(b) The borrowing of money on behalf of Diplomat PB, which they then converted to their own use and benefit.

47.

On August 5, 2008, Plaintiffs, Diplomat PB and Small Street filed a "Complaint for Breach of Contract, Fraud, RICO, Breach of Fiduciary Duty, Conversion and Accounting", commencing the First Superior Court Action. A copy of that Complaint is attached hereto as Exhibit "A" and is incorporated herein, in its entirety, by reference.

48.

After litigation ensued, Plaintiffs and the defendants, including R.C. Patel, resolved the First Superior Court Action pursuant to a settlement agreement under which R.C. Patel and the other defendants agreed to make certain payments to Plaintiffs.

49.

The defendants in the First Superior Court Action subsequently defaulted on their payment obligations and Plaintiffs commenced the Second Superior Court Action to enforce those obligations.

50.

On September 12, 2011, the Superior Court entered an "Order on Plaintiffs' Motion for Summary Judgment" in the Second Superior Court Action, awarding damages in favor of Plaintiffs and against the defendants. Specifically, the Superior Court awarded SR 20 damages against R.C. Patel in the amount of $1,263,358.30, and awarded Berkeley damages against R.C. Patel in the amount of $782,755.87 (collectively, the "Superior Court Judgment"). A copy of the Superior Court's September 12, 2011 Order is attached hereto as Exhibit "B" and is incorporated herein by reference.

51.

R.C. Patel filed for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code") on August 30, 2016 (the "Petition Date").

52.

As of the Petition Date, R.C. Patel remains indebted to SR 20 under the Superior Court Judgment in the amount of $1,829,906.78; as of the

Petition Date, R.C. Patel remains indebted to Berkeley under the Superior Court Judgment in the amount of $1,108,027.99.

COUNT ONE:
NON-DISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(2)

53.

Plaintiffs restate and re-allege the facts stated and alleged in Paragraphs 1 through 52 above by reference as if specifically set forth verbatim herein.

54.

R.C. Patel engaged in actual fraud by making knowing and reckless misrepresentations to Plaintiffs, including by omission, as further stated herein.

55.

R.C. Patel made such misrepresentations with the intent to deceive Plaintiffs and to induce Plaintiffs to rely thereon to their detriment.

56.

Plaintiffs reasonably relied upon those misrepresentations to their detriment, and have been damaged as a result.

57.

R.C. Patel's actions constitute fraud on the part of R.C. Patel for which Plaintiffs are entitled to recover damages, as established by the Superior Court Judgment.

58.

Pursuant to 11 U.S.C. § 523(a)(2), the Superior Court Judgment is not dischargeable.

COUNT TWO:
NON-DISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(4)

59.

Plaintiffs restate and re-allege the facts stated and alleged in Paragraphs 1 through 52 above by reference as if specifically set forth verbatim herein.

60.

R.C. Patel's actions, as discussed in this Complaint, constitute fraud or defalcation while acting in a fiduciary capacity.

61.

Pursuant to 11 U.S.C. § 523(a)(4), the Superior Court Judgment is not dischargeable.

COUNT THREE:
NON-DISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(6)

62.

Plaintiffs restate and re-allege the facts stated and alleged in Paragraphs 1 through 52 above by reference as if specifically set forth verbatim herein.

63.

R.C. Patel's actions, as discussed in this Complaint, constitute willful and malicious injury to Plaintiffs and to Plaintiffs' property interests.

64.

Pursuant to 11 U.S.C. § 523(a)(6), the Superior Court Judgment is not dischargeable.

WHEREFORE, Plaintiffs pray as follows:

(a) That the Superior Court Judgment as to R.C. Patel be determined to be non-dischargeable under 11 U.S.C. § 523(a)(2);

(b) That the Superior Court Judgment as to R.C. Patel be determined to be non-dischargeable under 11 U.S.C. § 523(a)(4);

(c) That the Superior Court Judgment as to R.C. Patel be determined to be non-dischargeable under 11 U.S.C. § 523(a)(6); and

(d) That Plaintiffs be granted such other and further relief as is deemed just and appropriate under the circumstances.

Respectfully submitted, this 17th day of March, 2017.

/s/ John K. Rezac
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Attorneys for Berkeley Investments, LLC and SR 20 Lodging, Inc.

EXHIBIT “A”

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2008 AUG -5 AM 9:08
TOM LAWLER, CLERK

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

Diplomat PB Hotels, LLC, Small Street Development Company, LLC, SR 20 Lodging, Inc. and Berkley Investments, LLC,

Plaintiffs,

v.

Rajesh C. Patel, Mukesh C. Patel, DCM Hospitality II, LLC, a Georgia limited liability company, DCM Hospitality I, LLC, a Georgia limited liability company, Diplomat Hotel Corp., an Alabama corporation, Diplomat ONH, LLC, a Georgia limited liability company, Diplomat Construction Inc., a Georgia Corporation, Birmingham Asset Management, Inc., Alabama Corporation registered to do business in Georgia, and Diplomat Companies, LLC, a Georgia limited liability company,

Defendants.

Civil Action File No.: ________

JURY TRIAL DEMANDED

08A 07128 1

COMPLAINT FOR BREACH OF CONTRACT, FRAUD, RICO, BREACH OF FIDUCIARY DUTY, CONVERSION AND ACCOUNTING

COME NOW, Diplomat PB Hotels, LLC ("Diplomat PB"), Small Street Development Company, LLC ("Small Street"), SR 20 Lodging, Inc. ("SR 20"), and Berkley Investments, LLC ("Berkley"), Plaintiffs, and file this petition for Breach of Contract, Fraud, RICO, Breach of Fiduciary Duty, Breach of Duties to Avoid Conflicting Transactions, Conversion, and Defalcation, and respectfully shows the Court as follows:

PARTIES, JURISDICTION AND VENUE

1.

Defendant Rajesh C. Patel ("R.C. Patel") is a resident of Georgia and may be served at his home at 2325 Sugarloaf Club Drive, Duluth, Gwinnett County, Georgia 30097. R.C. Patel is subject to the jurisdiction of this Court.

2.

Defendant Mukesh C. Patel ("Mike Patel") is a resident of Georgia and may be served at his residence located at 2960 Carrey Drive, Atlanta, Georgia 30345. Mike Patel is subject to the jurisdiction of this Court.

3.

Defendant DCM Hospitality II, LLC ("DCM II") is a limited liability company established under the laws of the State of Georgia with its principal place of business at 2100 Parklane Drive, N.E., Suite A, Atlanta, DeKalb County, Georgia 30345. DCM II is subject to the jurisdiction of this Court, and service of process may be affected by personal service upon its registered agent, Rajesh C. Patel, 2100 Parklane Drive, N.E., Atlanta, Georgia 30345.

4.

Defendant DCM Hospitality I, LLC ("DCM I") is a limited liability company established under the laws of the State of Georgia with its principal place of business at 2100 Parklane Drive, N.E., Suite A, Atlanta, DeKalb County, Georgia 30345. DCM I is subject to the jurisdiction of this Court, and service of process may be affected by personal service upon its registered agent, Rajesh C. Patel, 2100 Parklane Drive, N.E., Atlanta, Georgia 30345.

5.

Defendant Diplomat Hotel Corp. ("Diplomat Hotel") is a corporation established under the laws of the State of Alabama with its principal place of business at 2100 Parklane Drive, N.E., Atlanta, Georgia 30345. Diplomat Hotel is subject to the jurisdiction of this Court, and service of process may be affected by personal service upon its registered agent, Rajesh C. Patel, 2100 Parklane Drive, N.E., Atlanta, Georgia 30345.

6.

Defendant Diplomat OHN, LLC ("OHN") is a limited liability company established under the laws of the State of Georgia with its principal place of business at 2100 Parklane Drive, N.E., Atlanta, Georgia 30345. OHN is subject to the jurisdiction of this Court, and service of process may be affected by personal service upon its registered agent, Rajesh C. Patel, 2100 Parklane Drive, N.E., Atlanta, Georgia 30345.

7.

Defendant Diplomat Construction Inc., ("Diplomat Construction") is a corporation established under the laws of the State of Alabama and authorized to transact business in Georgia with its principal place of business at 2100 Parklane Drive, N.E., Atlanta, Georgia 30345. Diplomat Construction is subject to the jurisdiction of this Court, and service of process may be affected by personal service upon its registered agent, Rajesh C. Patel, 2100 Parklane Drive, N.E., Atlanta, Georgia 30345.

8.

Defendant Birmingham Asset Management, Inc. ("BAM") is a corporation established under the laws of the State of Alabama and authorized to transact business in Georgia with its principal place of business at 2100 Parklane Drive, N.E., Atlanta, Georgia 30345. BAM is subject to the jurisdiction of this Court, and service of process may be affected by personal service upon its registered agent, Rajesh C. Patel, 2100 Parklane Drive, N.E., Atlanta, Georgia 30345.

9.

Defendant Diplomat Companies, LLC ("DC") is a limited liability company established under the laws of the State of Georgia with its principal place of business at 2100 Parklane Drive, N.E., Atlanta, Georgia 30345. DC is subject to the jurisdiction of this Court, and service of process may be affected by personal service upon its registered agent, Rajesh C. Patel, 2100 Parklane Drive, N.E., Atlanta, Georgia 30345.

10.

Venue is proper by virtue of the facts set forth herein.

FACTS COMMON TO ALL COUNTS

11.

Plaintiffs hereby incorporate and re-allege the preceding allegations as if fully restated herein.

12.

Defendants Mike Patel and R.C. Patel are well known in the South Asian community, and especially in the Indian community, being active in the American Asian Hotel Owners Association with Mike Patel being a past national president, and R.C. Patel having been a national director at large, and having founded Haven Trust Bank formerly known as Horizon Bank.

13.

Diplomat PB was created on or about April 27, 2000. It was represented to Small Street, Berkley and SR 20 (Small Street, Berkley and SR 20 hereinafter collectively referred to as the "Investors") that its sole members were Mike Patel and R.C. Patel, each holding an equal fifty-percent (50%) membership interest in Diplomat PB. It was further represented to the Investors that the purpose of Diplomat PB was to purchase a hotel, refurbish the hotel, rebrand the hotel and then sell it.

14.

Subsequent to the initial creation of Diplomat PB, three entities became new members, each with a twenty-five percent (25%) membership interest in Diplomat PB: (1) Small Street; (2) S R Lodging, Inc.; and (3) Berkley Investments, LLC.

15.

The remaining twenty-five percent (25%) membership interest in Diplomat PB is currently owned by Mike Patel and R.C. Patel 12 ½ % each.

16.

Small Street invested $500,000.00 in exchange for a twenty-five percent (25%) membership interest in Diplomat PB.

17.

SR 20 invested $500,000.00 in exchange for a twenty-five percent (25%) membership interest in Diplomat PB.

18.

Berkley invested $500,000.00 in exchange for a twenty-five percent (25%) membership interest in Diplomat PB.

19.

Pursuant to the Articles of Organization, R.C. Patel serves as the manager of Diplomat PB until the election of a new manager(s). Mike Patel has acted as a manager of Diplomat PB as well.

20.

No operating agreement for Diplomat PB was ever entered into by the Investors or Mike Patel and R.C. Patel.

21.

At all times R.C. Patel and Mike Patel took the responsibility, and solely by themselves and with the assistance of their accounting firm, prepared all tax returns filed on behalf of Diplomat PB.

22.

R.C. Patel's and Mike Patel's tenures as managing members have been marked by a number of significant deficiencies and questionable and conflicting transactions all to the detriment of Diplomat PB's business and its members.

23.

On or about September 12, 2000, Diplomat PB purchased a hotel property operated as a TravelLodge from RHM Wynfield, LLC that eventually was converted to a Country Inn & Suites (the "Country Inn & Suites Property").

24.

To fund the purchase of the Country Inn & Suites Property and subsequent renovations, Diplomat PB borrowed $4,000,000 from Nexity Bank.

25.

To secure the $4,000,000 construction loan, Diplomat PB executed, on or about September 12, 2000, a deed to secure debt, security agreement and assignment of rents, as well as a guaranty in the amount of $4,000,000, and two secured notes payable to Nexity Bank. The first Note was for $500,000. The second Note was for $3,500,000.

26.

R.C. Patel and Mike Patel failed on numerous occasions to properly pay subcontractors for work completed on the Country Inn & Suites renovation project, resulting in liens being placed on the title to the Country Inn & Suites Property owned by Diplomat PB.

27.

R.C. Patel and Mike Patel often failed to repay loan amounts by their maturity date and as a result, often had to modify loan agreements, extend the maturity dates, and borrow additional funds.

28.

R.C. Patel and Mike Patel regularly borrowed additional and substantial sums of money on behalf of Diplomat PB and failed to properly account for same.

29.

R.C. Patel and Mike Patel regularly directed Diplomat PB to pay substantial funds to various entities, including, Diplomat Hotel, an entity owned by R.C. Patel and Mike Patel, in payment of alleged management fees exceeding well over $1,500,000 in total without providing any explanation as to how the fee was calculated.

30.

R.C. Patel and Mike Patel regularly failed to maintain complete and accurate accounting records for Diplomat PB.

31.

R.C. Patel and Mike Patel often borrowed money on behalf of Diplomat PB, obligating Diplomat PB to repay the amounts borrowed, without consulting or advising the other Diplomat PB members.

32.

On or about December 21, 2005, R.C. Patel and Mike Patel, on behalf of Diplomat PB but without consulting or advising other Diplomat PB members, refinanced the Country Inn & Suites Property with GE Capital Corporation in the amount of $3,500,000.

33.

The settlement statement dated December 21, 2005 from the GE Capital Corporation refinancing indicates that $299,115 of cash was paid to the borrower, yet this sum of money has not been accounted for in Diplomat PB's accounting records, nor has any explanation been provided regarding the disposition of same.

34.

In November of 2006, R.C. Patel and Mike Patel, on behalf of Diplomat PB but without full disclosure to the other Diplomat PB members entered into a refinancing transaction and borrowed $8,175,000 from Morgan Stanley Mortgage Capital Inc.

35.

The settlement statement dated November 2006 from Morgan Stanley Mortgage Capital, Inc. refinancing indicates that $4,023,397.51 of cash was paid to the borrower, yet this sum of money has not been accounted for in Diplomat PB's accounting records, nor has any explanation been provided regarding the disposition of same.

36.

On or about April 17, 2007, R.C. Patel and Mike Patel, on behalf of Diplomat PB consummated the sale of the Country Inn & Suites property.

37.

Subsequent thereto R.C. Patel and Mike Patel, in direct opposition to the desires of the other Diplomat PB members to disburse the profits to the members of the Diplomat PB and then dissolve Diplomat PB, caused the proceeds from the May 17, 2007 sale to be paid to a Qualified Intermediary.

38.

R.C. Patel and Mike Patel have failed to account for at least $1,939,086.06 of net proceeds paid to a Qualified Intermediary reflected on a May 17, 2007 closing statement from the sale of Country Inn & Suites Property.

39.

Due to R.C. Patel and Mike Patel's numerous assurances concerning the business affairs of Diplomat PB, the Investors relied on these assurances that the business of affairs of Diplomat PB were proper.

40.

After many conflicting explanations of the proceeds of the sale of the Country Inn & Suites Property and the circumstances of this sale, the investors began pressing R.C. Patel and Mike Patel for information, but R.C. Patel and Mike Patel were not forthcoming with information.

41.

In late 2007 and early 2008 the extent of improper actions began coming to light. Yet, despite the mounting evidence of improperties, R.C. Patel and Mike Patel continued to assure the investors that everything was fine. They began producing documents to the Investors, many of which turned out to be misrepresentations of the true state of affairs of Diplomat PB.

42.

When the Investors continued to make demands for accounting information, R.C. Patel and Mike Patel threatened to "dilute their interests in Diplomat PB". Further, when Mahesh Patel on behalf of Berkley demanded Berkley's share and an accounting, R.C. Patel demanded that Investors backdate an Operating Agreement that never existed stating in an email:

> *" I don't have a signed agreement as I am proposing the amended operating agreements, we never had this and I am afraid if the IRS was to look at this Mahesh and other partners could lose the deductions they took in the last six years and possible face some penalties."*

The Investors refused to participate in backdating any agreements.

43.

Diplomat PB's 2005 accounting records indicate that over $400,000 was paid to R.C. Patel as an interest expense on an outstanding debt of $1,415,295.14, but no explanation has been made for this entry.

44.

Diplomat PB's 2005 accounting records indicate that over $252,000 was paid to Mike Patel as an interest expense on an outstanding debt of $1,361,892.27, but no explanation has been made for this entry.

45.

Diplomat PB's 2006 accounting records indicate that over $149,800 was paid to both R.C. Patel and Mike Patel as an interest expense on outstanding debts of $376,897.87 and $226,724.75 respectively, but no explanation has been made for either entry.

46.

R.C. Patel and Mike Patel managed Diplomat PB often without consulting or advising the other Diplomat PB members, and without providing the other Diplomat PB members with an inventory or accurate accounting of expenses.

47.

An explanation has not been provided regarding the nature and disposition of a $500,000 entry that appeared on the December 31, 2001 balance sheet, but did not appear on the December 31, 2002 balance sheet.

48.

An explanation has not been provided regarding the nature of an entry on DCM's December 31, 2007 balance sheet indicating an amount due from Diplomat PB $139,888, which does not appear on Diplomat PB's December 31, 2007 balance sheet.

49.

An explanation has not been provided regarding a discrepancy between the 2006 accounting records indicating no debts owed to R.C. Patel or Mike Patel, and the 2007 and 2008 accounting records showing that R.C. Patel owes $522,034 and that Mike Patel owes $370,322 to Diplomat PB.

50.

An explanation has not been provided regarding a 2008 accounting record reflecting the payment of an $89,749 management fee to Mark IV, a company owned by R.C. Patel and Mike Patel ("Mark IV").

51.

Despite numerous requests, R.C. Patel and Mike Patel have refused to provide the Plaintiffs with full accounting information for Diplomat PB or explanations for numerous accounting discrepancies.

52.

The Investors and Defendants R.C. Patel and Mike Patel are the only members of Diplomat PB. Allowing the investors to bring an action derivatively on behalf of Diplomat PB against R.C. Patel and Mike Patel in this instance will prevent multiple suits by the members, protect creditors of Diplomat PB by ensuring recovery by Diplomat PB, protect the interests of all the members of the LLC without prejudicing the rights of the other members, and will adequately compensate the injured members.

53.

The Investors meet all the prerequisites of O.C.G.A. §14-11-801 to bring this action derivatively.

54.

R.C. Patel and Mike Patel operate many different businesses related to the hotel industry. They solely operate all of the named Defendant corporate entities.

55.

It is R.C. Patel and Mike Patel's common practice to bring investors together to purchase hotel or other investment property.

56.

It is R.C. Patel and Mike Patel's common practice to commingle assets and loans of the different entities they have ownership in when it suits their personal interests with complete disregard for the impact such actions may have on the different entities they have ownership in.

COUNT I
BREACH OF FIDUCIARY DUTY

57.

Plaintiffs hereby incorporate and re-allege the preceding allegations as if fully restated herein.

58.

Defendants R.C. Patel and Mike Patel each owed Plaintiffs a fiduciary duty to:

(a) properly perform and administer their obligations under Georgia law relating to their obligations as Managers of Diplomat PB;

(b) to fairly account for loans to and from Diplomat PB;

(c) to hold the proceeds of the sale of the Country Inn & Suites Property;

(d) to fully, fairly, completely and truthfully disclose to Plaintiffs all material facts concerning any breach or other misconduct by any other Defendants in their managerial capacities;

(e) to properly and accurately file tax returns on behalf of Diplomat PB.

59.

Defendants R.C. Patel and Mike Patel intentionally, knowingly, recklessly or negligently breached the fiduciary duties it owed to Plaintiffs in that each Defendant either acquiesced, acted or participated in:

(a) borrowing monies from Diplomat PB;

(b) commingling personal assets with that of Diplomat PB and not accounting for the same;

(c) participating in conflicting interest transactions;

(d) without agreement from the other members of Diplomat PB, availed themselves of capital losses for income taxes to the detriment of the other members;

(e) fraudulently filed false and inaccurate tax returns;

(f) failed to perform and administer their obligations under Georgia law relating to their obligations as Managers of Diplomat PB; and

(g) possibly subjecting the Plaintiffs to the commission of tax fraud related to the non-reporting of sales of Diplomat PB assets resulting from the sale of the County Inn & Suites Property and rolling the proceeds thereof into an exchange without the consent of other members of Diplomat PB.

60.

The above-described conduct constitutes breach of fiduciary duty and Plaintiffs have been irreparably harmed and damaged in an amount to be proven at trial.

61.

By virtue of their actions as described above, defendants R.C. Patel and Mike Patel each acted with a specific intent to harm Plaintiffs.

62.

By reason of the aggravating circumstances of the acts and the intentions of Defendants R.C. Patel and Mike Patel, their conscious and willful disregard of the rights of Plaintiffs through which they have acted, and their specific intent to harm Plaintiffs, Plaintiffs are entitled to recover exemplary damages to be determined by the enlightened conscience of an impartial jury, to deter Defendants from repeating their wrongful conduct.

63.

Defendants R.C. Patel and Mike Patel, by and through their conduct as described above, each received some portion of, or some benefit from, the cash proceeds of the sale of the Country Inns & Suites Property.

64.

As set forth above, R.C. Patel and Mike Patel have breached their fiduciary duties as managing members of Diplomat PB under O.C.G.A. §§ 14-11-304, 14-11-305, 14-11-307, 14-11-313, 14-11-407, and 14-11-408.

65.

R.C. Patel's and Mike Patel's conduct constitutes legal oppression of Plaintiffs' interest in Diplomat PB.

66.

R.C. Patel and Mike Patel have also violated their duties of good faith, loyalty, and fairness.

67.

Due to R.C. Patel's and Mike Patel's breach of fiduciary duties, Plaintiffs are entitled to recover damages in an amount to be proven at trial. Further Plaintiffs are entitled to damages against the other Defendants to disgorge them of income they improperly received due to the actions of R. C. Patel and Mike Patel.

COUNT II
BREACH OF OBLIGATIONS TO AVOID CONFLICICTING TRANSACTIONS

68.

Plaintiffs hereby incorporate and re-allege the preceding allegations as if fully restated herein.

69.

There is no signed operating agreement for Diplomat PB. As such, the default provisions of the Georgia Limited Liability Company Act apply to Diplomat PB.

70.

R.C. Patel and Mike Patel entered into numerous transactions which were conflicting interest transactions as defined by Georgia Law.

71.

R.C. Patel and Mike Patel are founding members of Haven Trust Bank and own a significant amount of stock in Haven Trust Bank. On behalf of Diplomat PB, R.C. Patel and Mike Patel borrowed significant amounts of money from Haven Trust Bank without the knowledge, understanding and/or informed consent of the Investors.

72.

R.C. Patel and Mike Patel formed DCM I and DCM II. Unbeknownst to the Investors, DCM II was owned by Diplomat PB (according to one document) or R.C. Patel and Mike Patel and Mark IV Realty, LLC. R.C. Patel and Mike Patel entrusted the operations of the Country Inn & Suites Property to DCM II pursuant to a Hotel Lease Agreement effective as of January 1, 2004. DCM II, managed by R.C. Patel, then entered into a lease/management agreement with Mark IV Realty without the knowledge, understanding and/or informed consent of the Investors.

73.

R.C. Patel and Mike Patel allowed Mark IV Realty to manage another one of its hotels through a similar arrangement with DCM I. R.C. Patel and Mike Patel had an ownership interest in DCM I.

74.

Without the knowledge, understanding and/or informed consent of the Investors, R.C. Patel and Mike Patel later terminated the Mark IV agreements described above. In a "settlement" of claims Mark IV allegedly raised against DCM I and DCM II, DCM II agreed to pay to $108,954.39 in asset management fees and DCM I and DCM II agreed to pay an additional $667,330.58.

75.

Additionally, in consideration for the monies set forth in the previous paragraph, Mark VI agreed to transfer its ownership interest to DC.

76.

Diplomat PB has paid some or all of this settlement amount yet received no benefit for the settlement. On the other hand, DCM I, DCM II, DC, R.C. Patel and Mike Patel have received substantial benefits from the settlement, which settlement was entered into without the knowledge, understanding and/or informed consent of the Investors.

77.

After the sale of the Country Inn & Suites Property, the Investors wanted the profits distributed to the members of the LLC. Nevertheless, without the knowledge, understanding and/or informed consent of the Investors, R.C. Patel and Mike Patel caused the proceeds to be put in the account of a 1031 Qualified Intermediary to be used to purchase another property ("Sales Proceeds").

78.

On May 17, 2007 R.C. Patel and Mike Patel caused the Sales Proceeds to be commingled with other funds with other investors to purchase a large tract of land in Newnan, Georgia ("Newnan Property") for $17,926,166.44 on October 30, 2007.

79.

The other entities involved in buying the Newnan Property were OHN, BAM and DC. These other entities are all owned solely by R.C. Patel and Mike Patel.

80.

R.C. Patel and Mike Patel caused all of these entities to execute jointly and severally a mortgage on the Newnan Property in the amount of Sixteen Million and Four Hundred Thousand Dollars ($16,400,000.00). This was done without the knowledge, understanding and/or informed consent of the Investors, and the excess liability over and above the loan for the portion of the Newnan property bought by Diplomat PB gave no benefit to Diplomat PB and in fact has a severe negative impact of Diplomat PB's liquidity and financial status.

81.

R.C. Patel and Mike Patel used Diplomat Construction to perform services for the Country Inn & Suites Property realizing an unauthorized and inappropriate profit from these services rendered, and did so without the knowledge and consent of the Investors.

82.

Plaintiffs are entitled to recover against R.C. Patel and Mike Patel for these breaches in an amount to be proven at trial. Further Plaintiffs are entitled to damages against the other Defendants to disgorge them of income they improperly received due to the actions of R. C. Patel and Mike Patel.

COUNT III
FRAUD AND MISREPRESENTATION

83.

Plaintiffs hereby incorporate and re-allege the preceding allegations as if fully restated herein.

84.

R.C. Patel and Mike Patel set up the entity Diplomat PB and brought in the Investors with an intent to defraud them.

85.

R.C. Patel and Mike Patel used their status in the Indian community to induce the Investors to participate in Diplomat PB. This fraud was further perpetrated by the actions and or complacency of the other Defendants.

86.

R.C. Patel and Mike Patel misrepresented numerous material facts to the Investors and performed fraudulent and deceitful acts throughout the Investors' ownership in Diplomat PB, including but not limited to misrepresenting:

a. The sources and uses of funds invested and spent in Diplomat PB;

b. The plan for the refurbishing of the Country Inn & Suites Property, and the plan to resell the Country Inn & Suites Property;

c. The actual purchase price of the Country Inn & Suites Property;

d. The disposition and use of funds from the parties as well as the disposition and use of funds from the various refinancing of the Country Inn & Suites Property;

e. The financial strengths and weaknesses of Diplomat PB; and

f. The availability of tax benefits arising out of the Investors ownership interest in Diplomat PB.

87.

Further, the Defendants defrauded the Plaintiffs:

(a) By refinancing the Country Inn & Suites Property several times to the detriment of the Investors and Diplomat PB and retaining a benefit from such refinances;

(b) By using management companies to run the Country Inn & Suites Property and taking exorbitant and unearned fees, thus siphoning profits from Diplomat PB and the Investors;

(c) By hiding the true state of affairs of Diplomat PB and in doing so preventing the Investors and Diplomat PB from taking earlier action; and

(d) By, without agreement from the other members of Diplomat PB, availed themselves of capital losses for income taxes to the detriment of the other members.

88.

Defendants R.C. Patel and Mike Patel each also took steps to actively conceal material information from Plaintiffs as alleged throughout this Complaint, particularly as it related to the Diplomat PB's true financial condition and the relationships between Diplomat PB and the other Defendants.

89.

The Investors and Diplomat PB justifiably relied on Defendants R.C. Patel and Mike Patel's representations and as a result of their justifiable reliance they suffered damages in an amount to be proven at trial.

COUNT IV
CONVERSION AND DEFALCATION

90.

Plaintiffs hereby incorporate and re-allege the preceding allegations as if fully restated herein.

91.

The acts of Defendants R.C. Patel, Mike Patel as described herein constitute conversion and defalcation under the laws of Georgia in that said Defendants either acquiesced, acted or participated in:

(a) using the funds of Diplomat PB to which Plaintiffs had a legal right, claim or interest and to which Defendants had no legal right, claim or interest;

(b) borrowing money on behalf of Diplomat PB, which Defendants converted to their own use and benefit.

(c) accepting funds of Diplomat PB with knowledge that Defendants had no legal right, claim or interest in the same;

(d) refusing Plaintiffs' subsequent written demand for return of said proceeds

92.

Plaintiffs show that as a result of Defendants' conversion, Plaintiffs have sustained and are entitled to an award of damages equal to the amount of monies converted and or defalcated in an amount to be proven at trial.

93.

Defendants' actions in converting personal property in which Plaintiffs had a legal interest and in which Defendants had no legal interest, as well as defalcating personal property in which Plaintiffs had a legal interest and in which Defendants had no legal interest, and in refusing to reimburse Plaintiffs the proceeds of the disposition of such personal property upon demand constitutes a willful and unjustified misappropriation of said personal property and the proceeds of said sale, carried out with a specific intent to harm Plaintiffs by depriving them of the benefit of either such property or proceeds.

COUNT V
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT CLAIMS

94.

Plaintiffs hereby incorporate and re-allege the preceding allegations as if fully restated herein.

95.

Defendants R.C. Patel and Mike Patel, DCM I, DCM II, Diplomat Construction, Diplomat Hotels, BAM, OHN, and DC (collectively "RICO Defendants"), jointly and individually, have engaged in a series of transactions which constitute predicate acts under the Georgia Racketeer Influenced and Corrupt Organizations Act.

96.

All of the RICO Defendants are under the direction and control of RC Patel and Mike Patel, owned by R.C. Patel and Mike Patel and all operate as a common enterprise with the same address, employees, accountants, contractors. Further, all of these entities use the same phone number, email and website, and even the same letterhead.

97.

These acts include Defendants' actions, jointly and individually as described herein in acting, participating or acquiescing in:

(a) signing false documents to obtain loans;

(b) signing false documents showing the corporate entities were authorized to make certain transactions when they were not;

(c) mailing and emailing false information to the lenders and the Investors and/or the Investors' legal counsel;

(d) misrepresenting the true purchase and sales prices of the Country Inn & Suites Property;

(e) stealing, defalcating, and/or converting money from Diplomat PB;

(f) attempting to have the Plaintiffs backdate corporate documents in order to receive favorable tax treatment;

(g) defalcating money from Diplomat PB;

(h) by making false statements to the investors and omitting statements of material facts to the investors in connection with the sale of the investors' membership interests in Diplomat PB in violation of O.C.G.A. §10-5-12;

(i) without agreement from the other members of Diplomat PB, availed themselves of capital losses for income taxes to the detriment of the other members, in violation of state and federal tax laws and;

(j) making false statements to taxing authorities or conspiring to do the same regarding the sale of the Hotel and the purchase of the Newnan property.

98.

These acts also include Defendants' activities, jointly and individually, in using the United States Mail, facsimile transmissions and email to perpetrate the illegal actions described in this Complaint.

99.

Defendants' activities as described above, jointly and individually, violate the provisions of O.C.G.A. § 16-10-20, and therefore the provisions of the Georgia Racketeer Influenced and Corrupt Organizations Act.

100.

Defendants' activities as described above, jointly and individually, violate the provisions of 18 U.S.C. § 1341 and therefore the provisions of the Georgia Racketeer Influenced and Corrupt Organizations Act as set forth in this count and because:

(a) Defendants used the United States Mail as part of an overall scheme to defraud Plaintiffs;

(b) Defendants conspired to have the investors commit tax fraud; and

(c) the term "racketeering activity" in Georgia includes, without limitation, any conduct which violates the provisions of 18. U.S.C. § 196(A)(D), including the provisions of 18. U.S.C. § 1341. See O.C.G.A. § 16-14-3(9)(A)(xxix); Capital Construction Co. v. Professional Services Industries, Inc., 258 Ga. App 44, 574 S.E.2d 333 (2002).

101.

Plaintiffs show that as a result of Defendants' joint and individual predicate acts, Plaintiffs have sustained and are entitled to an award of treble damages, in an amount equal to three times the amount of the amount of damages to be proven at trial.

102.

By virtue of their actions as described above, Defendants R.C. Patel, Mike Patel, Diplomat Construction, Diplomat OHN, BAM, DCM I, DCM II, Diplomat Hotels and

DC, each together and in concert with one and the other acted with a specific intent to harm Plaintiffs.

103.

By reason of the aggravating circumstances in the acts and the intentions of Defendants R.C. Patel, Mike Patel, Diplomat Construction, BAM, DCM I, DCM II, Diplomat Hotels, Diplomat OHN, and DC, their conscious and willful disregard of the rights of Plaintiffs by which they have acted, and their specific intent to harm Plaintiffs, Plaintiffs are entitled to recover exemplary damages to be determined by the enlightened conscience of an impartial jury, to deter Defendants from repeating their wrongful conduct.

COUNT VI
PUNITIVE DAMAGES IN ACCORDANCE WITH O.C.G.A. § 51-12-5.1

104.

Plaintiffs hereby incorporate and re-allege the preceding allegations as if fully restated herein.

105.

R.C. Patel's and Mike Patel's willful and intentional breach of their fiduciary duties evinces malice, fraud, wantonness, oppression, and an entire want of care that raises the presumption of conscious indifference to consequences.

106.

Accordingly, Plaintiffs are entitled to award of punitive damages under O.C.G.A. § 51-12-5.1 because of the aggravating circumstances set forth above and to punish and deter R.C. Patel and Mike Patel from engaging in like behavior in the future.

107.

The acts of Defendants R.C. Patel and Mike Patel acts as described herein, constitute fraud and misrepresentation under the laws of Georgia.

COUNT VII
ATTORNEY FEES IN ACCORDANCE WITH O.C.G.A. § 13-6-11

108.

Plaintiff hereby incorporates and re-alleges the preceding allegations as if fully restated herein.

109.

Defendants have acted in bad faith, caused Plaintiffs unnecessary trouble and expense, and have been stubbornly litigious such that Plaintiffs are entitled to award of reasonable attorney fees and expenses of litigation under O.C.G.A. § 13-6-11 and other applicable laws.

WHEREFORE, Plaintiffs respectfully pray as follows:

1. That process issue;

2. That this matter be set down for trial by a jury;

3. That the Court award damages caused by Defendants Mike Patel's and R.C. Patel's breach of fiduciary duties and disgorge the income received by the other Defendants as a result of these breaches;

4. That the Court award damages caused by Defendants Mike Patel's and R.C. Patel's breach of their duties to avoid conflicting transactions and disgorge the income received by the other Defendants as a result of these breaches;

5. That the Court award damages against Defendants Mike Patel and R.C. Patel for conversion and for exemplary damages;

6. That the Court award damages against Defendants Mike Patel and R.C. Patel for defalcation and for exemplary damages;

7. That the Court award Plaintiffs punitive damages in accordance with O.C.G.A. § 51-12-5.1;

8. That the Court award damages against all Defendants, jointly and severably for treble damages and all reasonable attorneys' fees for violation of the Racketeer Influenced and Corrupt Organizations Act and for exemplary damages;

9. That the Court award Plaintiff its reasonable attorney fees and expenses of litigation in accordance with O.C.G.A. § 13-6-11; and

10. For such other relief as the court deems just, proper, and equitable.

This 4 day of August, 2008.

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EXHIBIT "B"

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA
2011 SEP 12 AM 10: 13
TOM LAWLER, CLERK

IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

BERKELEY INVESTMENTS, LLC., and SR 20 LODGING, INC.

Plaintiffs,

v.

RAJESH "R.C." PATEL, MUKESH "MIKE" PATEL, DIPLOMAT PB HOTELS, LLC, and DIPLOMAT HOTEL CORP.,

Defendants.

Civil Action File No.

11-A-01626-1

ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The Plaintiff having filed a Motion for Summary Judgment on its claim that the Defendant Diplomat PB Hotels, LLC ("PB") breached its promissory notes to the Plaintiffs and on its claims that Defendants Mukesh "Mike" Patel ("Mike Patel"), Rajesh "R.C. Patel ("R.C. Patel") and Diplomat Hotel Corp. ("Diplomat") breached their guaranties on the promissory notes;

The Court having reviewed the Plaintiffs' Complaint, Motion for Summary Judgment, Brief in Support of Plaintiffs' Motion for Summary Judgment, Statement of Material Facts with affidavits of the Plaintiffs attached thereto, and Theories of Recovery, and heard oral argument of the Plaintiff, finds as follows:

1.

The Plaintiffs filed suit against the Defendants for breach of contract, fraud, RICO violations, conversion, and breach of fiduciary obligations in Civil Action File No.: 08A-07128-1. After litigation ensued, the parties settled this case whereby the Defendants agreed to, among other things pay certain monies to the Plaintiffs pursuant to a settlement agreement and various promissory notes. The Defendants did make some payments to the Plaintiffs pursuant to the settlement agreement and the promissory notes, but after the Defendants defaulted in their obligations pursuant to the settlement agreement and the promissory notes, the Plaintiffs brought this instant action.

2.

The Court notes that the Defendants did not file a response to the Plaintiffs' Motion for Summary Judgment ~~and further despite the Court serving the Defendants with a Rule Nisi Order instructing them to come to a hearing on this matter scheduled for September 12, 2011, the Defendants nor their counsel appeared in Court for the hearing on this matter.~~

WMR II

3.

The Court finds that Defendant Diplomat PB Hotels, LLC breached the promissory notes to the Plaintiffs, and further, that the remaining Defendants are in default of their personal guaranties.

4.

The Court further finds that the promissory notes called for attorney's fees in the event of a breach and the Plaintiffs complied with O.C.G.A. § 13-1-11 in providing notice of Plaintiffs' intention to seek attorney's fees.

As such, IT IS HEREBY ORDERED that Plaintiff SR 20 Lodging, Inc. is entitled to a judgment against Diplomat PB Hotels LLC for $1,139,999.99 principal, late charges of $9333.31, attorneys fees of $114,025.00, interest as of September 12, 2011 of $72,458.24, for a total judgment of $1,263,358.30, with interest continuing to accrue at the rate of $312.32 per day until the principal due is paid. SR 20 Lodging, Inc. is further entitled to a judgment of against

WMR II

guarantors Rajesh "R.C. Patel and Diplomat Hotel Corp., jointly and severably in the amount of $1,263,358.30 and a judgment against Mukesh "Mike" Patel, who had a limited guaranty, in the amount of $252,671.66.

WMR II It IS FURTHER ORDERED that Plaintiff Berkeley Investments, LLC is entitled to a judgment against Diplomat PB Hotels LLC of $665,228.48 principal, late charges of $9333.31, attorneys fees of $66,547.85, interest as of September 12, 2011 of $41,646.23, for a total judgment of $782,755.87 with interest continuing to accrue at the rate of $179.51 per day until the amount principal due is paid. Berkeley Investments, LLC is further entitled to a judgment of against guarantors Rajesh "R.C. Patel and Diplomat Hotel Corp., jointly and severably in the amount of $782,755.87 and a judgment against Mukesh "Mike" Patel, who had a limited guaranty, in the amount of $156,551.17.

The Clerk of the Court of the Superior Court of Gwinnett County, Georgia is hereby instructed to issue a writ of Fieri Facias against the Defendants as set forth in this Order.

SO ORDERED this 12th day of September, 2011.

William M. Ray II

William M. Ray, II
Judge, Superior Court of Gwinnett County

Prepared by:

Michael J. Lober
Georgia Bar# 455580
Attorney for the Plaintiffs